IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM 1900.**

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NO. 69.

THE INTERSTATE COMMERCE COMMISSION, Appellant,

*vs.*

THE WESTERN & ATLANTIC RAILROAD CO., ET AL., Appellees.

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NO. 68.

THE INTERSTATE COMMERCE COMMISSION, Appellant,

*vs.*

THE CLYDE STEAMSHIP COMPANY, THE GEORGIA RAILROAD COMPANY, ET AL., Appellees.

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NO. 70.

THE INTERSTATE COMMERCE COMMISSION, Appellant,

*vs.*

THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY, THE WESTERN RAILWAY OF ALABAMA, ET AL., Appellees.

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**Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.**

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***Rejoinder Argument of ED. BAXTER,***

**Solicitor for Appellees as of Record,**

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I.

Counsel for appellant on page 5 of his reply argument says:

" It is urged as a ground for not enforcing the orders of the Commission that they simply prohibit the charging of higher rates

to the shorter than to the longer distance points, and that, therefore, the carriers may still practice discrimination under them to the extent of making the shorter distance rates as high as the longer distance rates."

What I did urge was that:

"If it constitutes undue preference in favor of the longer distance points, to charge less to them than to the shorter distance points, it constitutes unjust prejudice against the shorter distance points, to charge as much to them as to the longer distance points. *If distance is to be the controlling factor* in determining whether undue preference or undue prejudice exists in a given case *all rates must be constructed upon a mileage basis.*"

If the shorter distance rates in these cases ought to be constructed upon a mileage basis, all other railroad rates in this country should be constructed upon a mileage basis; and to construct all the railroad rates in this country upon a mileage basis would be to destroy all long-distance traffic.

See my argument pp. 90-94, pp. 127-131.

II.

Counsel on page 5 of his reply argument says: "Section 4 of the law simply forbids the greater charge for the shorter than the longer haul. It does not expressly forbid as high a charge for the shorter as for the longer haul. Therefore, under section 4 the carrier may charge as high a rate for a shorter as for a longer haul."

Section 4 does not forbid the greater charge for the shorter than the longer haul unless the circumstances and conditions are substantially similar.

The competition at Atlanta and Opelika renders the circumstances and conditions at those points substantially dissimilar from the circumstances and conditions at the shorter distance points.

It is virtually conceded that the Commission erred in hold-

ing that the shorter distance rates in these cases are prohibited by the fourth section.

It is also virtually conceded that unless the shorter distance rates are prohibited by the third section, or by the first section they are not prohibited at all.

They are not prohibited by the third section unless they constitute an undue preference of the longer distance points; and unless all rates must be made upon a mileage basis, the mere fact that the shorter distance rates are as high, or even higher than the longer distance rates, does not constitute an undue preference of the longer distance points.

"The mere circumstance that there is, in a given case, a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act."

162 U. S., pp. 219, 220. T. & P. Ry. vs. I. C. C.

## III.

Counsel on page 6 of his reply argument says: "The Commission's orders are consistent with the view that the force of competition is somewhat greater at Atlanta and Opelika than at the shorter distance points."

This statement of counsel is a virtual concession that the rates at Atlanta and Opelika are the result of actual and effective competition at those points; and is wholly inconsistent with an argument made by him to the effect that the rates at Atlanta and Opelika are made by agreement between the carriers.

The statement is also a virtual concession that the force of competition at Atlanta and Opelika is at least somewhat greater than at the shorter distance points.

IV.

Counsel on page 6 of his reply argument says: "That leaving the shorter distance rates as high as the longer distance rates will be making due allowance for any greater force of competition at Atlanta and Opelika than at the shorter distance points shown by the testimony in these cases."

Counsel virtually concedes that the force of competition at Atlanta and Opelika is at least somewhat greater than at the shorter distance points, but he does not undertake to say, or even to suggest, how much greater it is.

It is a mere assumption to state that "leaving the shorter distance rates as high as the longer distance rates will be making due allowance for any greater force of competition at Atlanta and Opelika than at the shorter distance points," unless there is some evidence to show how much greater the force of competition is at Atlanta and Opelika, than it is at the shorter distance points.

See my argument pp. 127-131.

My contention is that the force of competition at Atlanta and Opelika has been sufficiently great to compel the acceptance of the precise rates which obtain at those points; and that the force of such competition as there may be at the shorter distance points, has never been sufficient to compel the acceptance of any rates lower than the precise rates which obtain at those points.

See my argument pp. 227, 228.

V.

Counsel on page 6 of his reply argument says:

"If the rates to the shorter distance points are made not higher than the rates to the longer distance points, this will do away with the unjust or undue prejudice, or disadvantage to the shorter distance points shown to be the result of the higher rates to those points than to the longer distance points."

If railroad freight rates ought to be made on a mileage basis the shorter distance points are entitled to *lower* rates than the longer distance points; and therefore it will "*not* do away with the unjust or undue prejudice or disadvantage to the shorter distance points" to make the rates to those points not higher than the rates to the longer distance points.

The whole question in these cases, so far as the third section of the act is concerned, is whether it constitutes unjust or undue prejudice to construct railroad freight rates otherwise than upon a mileage basis; and if it be held that it does, then all the railroad rates in this country must be made upon a mileage basis.

## VI.

Counsel for appellant on page 7 of his reply argument says:

"If the Social Circle rate is made the same, $1.14 per hundred pounds, Atlanta merchants *cannot* lay down at Social Circle goods originally shipped from New York at the same aggregate rate as that on which the Social Circle merchant could place them there. The Atlanta merchant would have to pay the $1.14 rate to Atlanta plus the local rate of 30 cents back to Social Circle, whereas the Social Circle merchant would only pay the $1.14 rate."

This contention of counsel would place the *consumers* who reside at Social Circle at the mercy of Social Circle merchants; whereas, they now have the benefit of the fact that Atlanta merchants can compete with Social Circle merchants in the sale of goods at Social Circle. This Court has said that among other facts which are to be taken into consideration in construing the act to regulate commerce is the welfare and advantage "of the great body of the citizens of the United States who constitute the *consumers* and recipients of the merchandise carried."

162 U. S., p 218. T. & P. Ry. vs. I. C. C.

Again, this Court has said "that the welfare of the community which is to receive *and consume* the commodities" is to be considered.

162 U. S., p. 234. T. & P. Ry. vs. I. C. C.

Counsel seems to suppose that the chief object of the act to regulate commerce is to give local merchants a monopoly of local traffic without regard to the effect upon local consumers.

VII.

Counsel for appellant on page 7 of his reply argument says: "As to *intermediate territory*—that is, territory between Social Circle and Atlanta—the Social Circle merchant having the same rate as the Atlanta merchant, could sell goods at a point *half way between Social Circle and Atlanta* on terms of equality with the Atlanta merchant so far as rates are concerned, and would have the advantage over the Atlanta merchant in territory between *Social Circle* and the half way point."

If the Atlanta merchant were the only competitor with whom the Social Circle merchant would have to contend, the statement of counsel would be correct. But if it be held that the rates from New York to Social Circle must not be higher than the rates to Atlanta, it must also be held that the rates from New York to none of the other local stations on the Georgia Railroad must be higher than the rates to Atlanta.

The order of the Commission in case No. 68 enjoined the defendants from charging any higher rates to Greensboro, Madison, Social Circle, Covington, Conyers or Stone Mountain than are charged to Atlanta.

Trans. No. 68, pp. 17, 18.

Neither the Commission nor this Court would think for a moment of making a special exception in favor of Social Circle; for to do so would be to give Social Circle an undue preference over the other local stations on the Georgia Railroad. If the rates from New York to Social Circle are to be made as low as the rates to Atlanta, a similar order will have to be made with reference to all the other local stations on the Georgia Railroad; and the result will be to establish a blanket tariff quoting the same rates from New York to each of the local stations on the Georgia Railroad, which rates would be not higher than the rates to Atlanta.

As a merchant at Social Circle would have to pay the same rate on goods from New York as a merchant at Greensboro, or Stone Mountain, and as the Social Circle merchant, if he undertook to sell goods at Greensboro or Stone Mountain, would have to pay in addition to the New York rate a local rate from Social Circle to Greensboro or Stone Mountain, it is evident that he could not sell in competition with merchants at Greensboro, or Stone Mountain, if the amount of the local rate which he would have to pay is sufficient to affect the price which he would otherwise charge for his goods at Greensboro or Stone Mountain.

In other words, if the contention of counsel be sustained by the Court, the effect will be not only to prevent Atlanta merchants and Augusta merchants from selling goods to the consumers who reside at the local stations of the Georgia Railroad, but also to prevent the merchants at any one of those local stations from selling goods to consumers at any other local station; and the consumers at each of said local stations will be placed entirely at the mercy of the merchants at that local station.

That I am right, is demonstrated by the following calculation:

Social Circle is equidistant from Greensboro and Stone Mountain; the distance from Social Circle to each of them being 36 miles. (Trans. p. 27.)

The Georgia Railroad Commission first-class rate for 36 miles is 26 cents per hundred pounds. (Trans. No. 69, p. 105.)

A Social Circle merchant desiring to sell first-class goods at Greensboro would have to pay:

| | |
|---|---|
| Rate from New York to Social Circle | $1 14 |
| Local rate from Social Circle to Greensboro | 26 |
| Total | $1 40 |
| Whereas, the Greensboro merchant would pay a rate from New York to Greensboro of only | $1 14 |
| Making a difference in favor of the Greensboro merchant as against the Social Circle merchant of | 26 |

VIII.

Counsel for appellant on page 8 of his argument says:

"The order of the Commission in the 'Social Circle case' (162 U. S., 184), approved by the Circuit Court of Appeals and by this Court, was the same as the orders in the present cases, namely, that the rates to Social Circle should not be made higher than the rates to Augusta."

It was not the intention of this Court to decide in the "Social Circle Case" that competition, though it be between carriers subject to the act, cannot be considered, provided it possesses the attribute of producing a substantial and material effect upon traffic in rate making.

175 U. S., p. 673. Louisville, etc., R. R. Co. v. Behlmer.

Counsel for appellant on page 9 of his reply argument says:

"We have also a precedent for the orders in the present cases in trunk-line territory, where the rates to shorter distance points are sometimes made *as high as* the rates to longer distance points."

The fact that rates in trunk-line territory are made as high to shorter distance points, as to longer distance points, shows that where competition conflicts, distance is not allowed to control in that territory, any more than in Southern territory.

If Southern rates must be made according to distance, so must rates in the trunk-line territory. In fact, all railroad rates will have to be made according to distance, or mileage.

IX.

Counsel for appellant on page 9 of his reply argument says:

"If the Commission were of the opinion that the shorter distance rates in a given case should be lower than the longer distance rates, it could only so order, and *could not prescribe the lower rates.*"

If the Commission were of the opinion that the shorter distance rates in a given case should be lower than the longer distance rates, while it could not prescribe the lower rates, it could report its opinion as to how much lower the shorter distance rates should be than the longer distance rates.

But the Commission, instead of doing so in these cases, issued orders which permit the defendants to charge rates as high to the shorter distance points, as to the longer distance points.

## X.

Counsel for appellant on page 11 of his reply argument says:

"We exhibited before the Court the following diagram, illustrating the combination of the through rate from New York to Atlanta with the high local back to Social Circle as the through rate on a shipment from New York to Social Circle *direct:*

"The large line underneath the small line between Atlanta and Social Circle represents the high local rate charged as a part of the through rate on goods shipped from New York to and *delivered* at Social Circle."

It will be noticed that he uses a dotted line of the least possible width to illustrate the through rate from New York to Atlanta, and that underneath that line he places a large line to represent "the high local rate charged as a part of the through rate on goods shipped from New York to and delivered at Social Circle." The large line underneath the small line is made to look like an "excrescence;" and the illustration is positively misleading.

It is conceded that the rates charged by defendants from New York to Social Circle are as much through rates as those charged from New York to Atlanta. Through bills of lading are issued from New York to Social Circle, just as from New York to Atlanta. Freight from New York to Social Circle is

delivered at Social Circle, without being carried through Social Circle to Atlanta and then back to Social Circle.

The rail and water mileage from New York to Atlanta is made up as follows:

| | |
|---|---|
| New York to Charleston | 250 miles. |
| Charleston to Augusta | 137 miles. |
| Augusta to Atlanta | 171 miles. |
| Total | 558 miles. |

See Trans. No. 69, p. 27.

The first-class rail and water rate from New York to Atlanta is $1.14 per hundred pounds.

See Trans. 69, p. 35.

The first-class rail and water rate per ton per mile from New York to Atlanta is therefore 4.09 cents.

The rail and water mileage from New York to Social Circle is made up as follows:

| | |
|---|---|
| New York to Charleston | 250 miles. |
| Charleston to Augusta | 137 miles. |
| Augusta to Social Circle | 119 miles. |
| Total | 506 miles. |

See Trans. No. 69 p. 27.

The first-class rail and water rate from New York to Social Circle is $1.44 per hundred pounds.

See Trans. No. 69, p. 27.

The first-class rail and water rate per ton per mile from New York to Social Circle is therefore 5.39 cents.

It will be seen that the rail and water rate per ton per mile from New York to Social Circle is $1\frac{33}{100}$ times the rail and water rate per ton per mile from New York to Atlanta; or to state it differently, if the rail and water rate per ton per mile from New York to Atlanta be represented by.....1
the rail and water rate per ton per mile from New York to Social Circle would be represented by.....$1\frac{33}{100}$

The rail and water mileage from New York to Stone Mountain is made up as follows:

| | |
|---|---|
| New York to Charleston | 250 miles. |
| Charleston to Augusta | 137 miles. |
| Augusta to Stone Mountain | 155 miles. |
| Total | 542 miles. |

Trans. No. 69, p. 27.

The first-class rail and water rate from New York to Stone Mountain is $1.32 per hundred pounds.

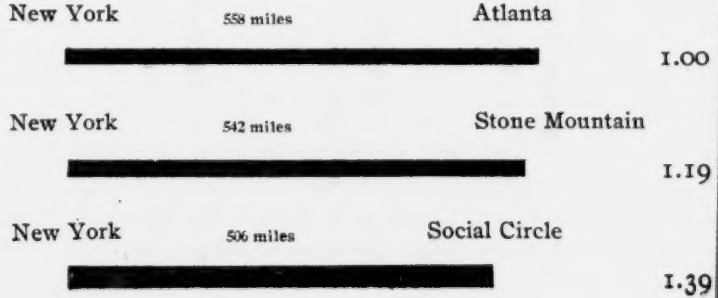
See Trans. No. 69, p. 27.

The first-class rail and water rate per ton per mile from New York to Stone Mountain is therefore 4.87 cents.

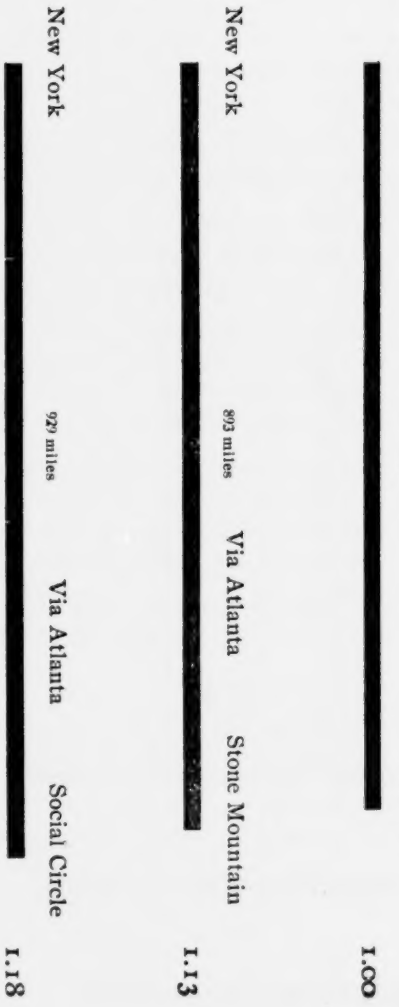
It will be seen that the rail and water rate per ton per mile from New York to Stone Mountain is $1\frac{19}{100}$ times the rail and water rate per ton per mile from New York to Atlanta; or to state it differently, if the rail and water rate per ton per mile from New York to Atlanta be represented by.....1
the rail and water rate per ton per mile from New York to Stone Mountain would be represented by.....$1\frac{19}{100}$

The width of the first line in the following diagram (No. 2) represents the rail and water rate per ton per mile from New York to Atlanta; the width of the second line represents the rail and water rate per ton per mile from New York to Stone Mountain; and the width of the third line represents the rail and water rate per ton per mile from New York to Social Circle.

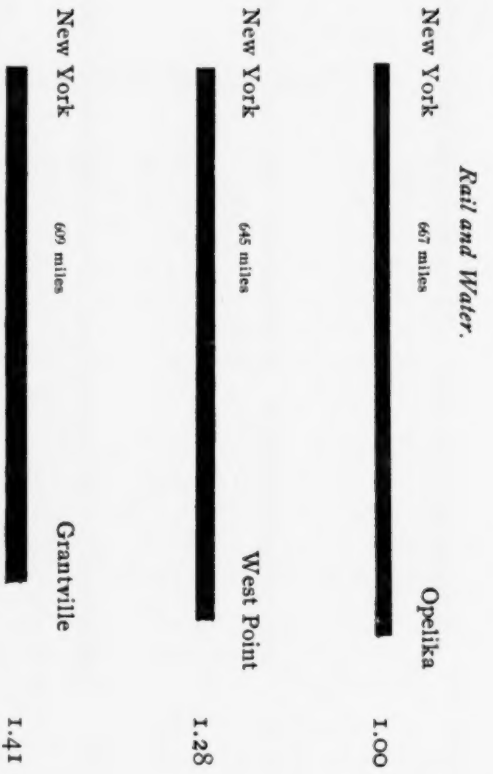
*Rail and Water.*



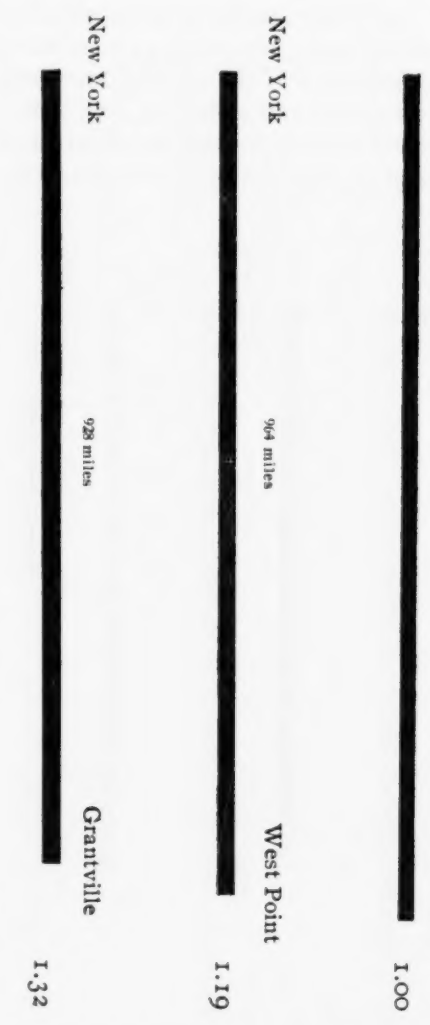
The width of the first line in the following diagram (No. 3) represents the all-rail rate per ton per mile from New York to Atlanta; the width of the second line represents the all-rail rate per ton per mile from New York, via Atlanta, to Stone Mountain; and the width of the third line represents the all-rail rate per ton per mile from New York, via Atlanta, to Social Circle.



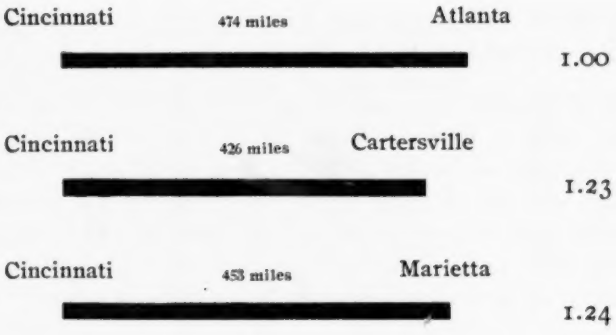
The width of the first line in the following diagram (No. 4) represents the rail and water rate per ton per mile from New York to Opelika; the width of the second line represents the rail and water rate per ton per mile from New York to West Point; and the width of the third line represents the rail and water rate per ton per mile from New York to Grantville.




The width of the first line in the following diagram (No. 5) represents the all-rail rate per ton per mile from New York to Opelika; the width of the second line represents the all-rail rate per ton per mile from New York to West Point; and the width of the third line represents the all-rail rate per ton per mile from New York to Grantville.




The width of the first line in the following diagram (No. 6) represents the all-rail rate per ton per mile from Cincinnati to Atlanta; the width of the second line represents the all-rail rate per ton per mile from Cincinnati to Cartersville; and the width of the third line represents the all-rail rate per ton per mile from Cincinnati to Marietta.




I have purposely selected two local stations on each of the three delivering roads involved in these cases. In case No. 69, which involves the Western & Atlantic Railroad, Marietta was selected because it is nearer to Atlanta than any of the other local stations affected by the order of the Commission in that case; and Cartersville was selected because it is about the same distance from Atlanta on that road, as Social Circle is on the Georgia Railroad.

In case No. 68, which involves the Georgia Railroad, Stone Mountain was selected because it is nearer to Atlanta than any of the other local stations affected by the order of the Commission in that case; and Social Circle was selected because appellant's counsel had already used that station in his diagram.

In case No. 70, which involves the Atlanta & West Point Railroad, West Point was selected because it is nearer to Opelika than any of the other local stations affected by the order of the Commission in that case; and Grantville was selected because it is about the same distance from Atlanta on that road as Social Circle is on the Georgia Railroad.

The proportions which the rates per ton per mile from New York and Cincinnati, respectively, to the longer distance points in these cases bear to the rates per ton per mile from New York and Cincinnati, respectively, to the shorter distance points, as shown by the transcripts in these cases, were furnished to the engraver with instructions to represent said proportions in the

width of the lines in diagrams numbers 2, 3, 4, 5 and 6 as accurately as it could be done.

While it will be seen that the rates per ton per mile to the shorter distance points, as shown by the width of the lines in said diagrams, are somewhat greater than the rates per ton per mile to the longer distance points, the differences are uniform throughout the entire length of the lines, and they are very slight indeed, when we remember that there is no such competition at the shorter distance points as at the longer distance points.

## XI.

Counsel for appellant on page 12 of his reply argument says:

"That the rates to Social Circle in case 68 and to such other localities in the same category embrace a charge for the haul through them on to the basing point and a charge for a local haul back, *when those hauls are not in fact made.*"

I deny that the rates to Social Circle, or to any of the other localities referred to, embrace a charge for the haul through them on to the basing point and a charge for a local haul back. The charge is made for transportation from the point of shipment (New York) to Social Circle; it being distinctly understood by all parties that the freight is to be delivered at Social Circle, and that it is not to be carried through Social Circle to Atlanta and back again.

To illustrate: The first class rail and water rate charged by defendants from New York to Social Circle, a distance of 506 miles, is $1.44 per hundred pounds; which is equivalent to a rate of less than 6 cents per ton per mile.

I submit that a charge of $1.44 for carrying one hundred pounds of freight 506 miles, or a charge of less than 6 cents for carrying two thousand pounds of freight 1 mile, is reasonably low.

In the Alabama Midland case, on class goods shipped from New York, over the Alabama Midland Railway to Troy, there

was a combination rate, equal to a rate made by adding to the competitive rate from New York to Montgomery the local rate from Montgomery back to Troy; but the rate was made for transportation from New York to Troy, and not for transportation through Troy to Montgomery, and back to Troy.

See 168 U. S., p. 144. I. C. C. vs Alabama Mid. Ry. Co.
See my argument pp. 192, 193.

## XII.

Counsel for appellant on page 14 of his reply argument states that "the rates from New York to LaGrange (case No. 70) are not the lowest combinations." He refers for his authority to his original printed argument for the Commission, page 162. On that page he quotes from the testimony of Mr. Calloway, who shows that the rate from New York to LaGrange on first-class freight is not the lowest combination. Mr. Calloway does not testify as to any of the other rates. But if the fact be as stated by counsel in his reply argument, it is doubtless a mere oversight on the part of rate clerks, and will be corrected. The fact certainly escaped the attention of the Interstate Commerce Commission, as no reference was made to it in the report and opinion of the Commission.

The principle upon which the defendants act, and which principle they undertake to defend, is to give to every local station the full benefit of all the competition that exists at the nearest competitive point; and if through oversight any rates have been put into LaGrange that are higher than the lowest available combination, they will be corrected.

Counsel on page 15 of his reply argument says that "the rates from Cincinnati to Acworth and Marietta (case No. 69) are not the lowest combinations." In this statement counsel is clearly mistaken.

The rates from Cincinnati to Chattanooga, Acworth, Marietta and Atlanta; and the rates from Chattanooga to Acworth and Marietta; and the distances from Atlanta to Acworth and Mari-

etta are shown in transcript 69, p. 23. The distance from Atlanta to Acworth as there shown is 35 miles; and the distance from Atlanta to Marietta as there shown is 21 miles. The rates for different distances, on the different classes of freight, as fixed by the Georgia Railroad Commission in its standard freight tariff, are shown in Trans. No. 69 p. 105.

The Commission reports that the rates from Cincinnati to all points north of Atlanta and south of Chattanooga are combinations of established rates to Chattanooga and local rates of the Western & Atlantic from Chattanooga.

Trans. No. 69, p. 23.

The following tables show that the rates from Cincinnati to Acworth, as well as the rates from Cincinnati to Marietta (being based on the Chattanooga combination, as found by the Commission), are lower than they would be if based upon the Atlanta combination:

RATES CINCINNATI TO ACWORTH.

| | CLASSES. | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | A | B | C | D | E | H | F |
| To Atlanta | 107 | 92 | 81 | 68 | 56 | 46 | 28 | 35 | 28 | 24 | 48 | 53 | 48 |
| Ga. Com. Rate 35 Miles | 26 | 23 | 21 | 19 | 15 | 12 | 12 | 12 | 8 | 7½ | 15 | 19 | 16 ½ |
| Total on Atlanta Combination | 133 | 115 | 102 | 87 | 71 | 58 | 40 | 47 | 36 | 31½ | 63 | 72 | 64 ½ |
| Chattanooga Combination | 124 | 107 | 94 | 78 | 64 | 49 | 39 | 45 | 35 | 30 | 58 | 64 | 61 |

RATES CINCINNATI TO MARIETTA.

| | CLASSES. | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | A | B | C | D | E | H | F |
| To Atlanta | 107 | 92 | 81 | 68 | 56 | 46 | 28 | 35 | 28 | 24 | 48 | 53 | 48 |
| Ga. Com. Rate 21 Miles | 20 | 18 | 16 | 14 | 12 | 10 | 10 | 10 | 7 | 6 | 12 | 14 | 14 |
| Total on Atlanta Combination | 127 | 110 | 97 | 82 | 68 | 56 | 38 | 45 | 35 | 30 | 60 | 67 | 62 |
| Chattanooga Combination | 127 | 109 | 96 | 79 | 65 | 50 | 38 | 45 | 35 | 30 | 56 | 65 | 62 |

XII.

Counsel for appellant on page 16 of his reply argument says that the order of the Commission in the Social Circle case had

two subdivisions; that in one it forbade the charging of higher rates from Cincinnati to Social Circle than were charged through Social Circle to Augusta; that in the other it directed that the rate from Cincinnati to Atlanta should be reduced from $1.07 to $1.00; that the Circuit Court of Appeals enforced the first subdivision of the order but denied the enforcement of the second subdivision; and he relies upon that case as a precedent for the proposition that an order of the Commission may be sustained in part and overruled in part.

The order of the Commission in the Social Circle case will be found reported in 162 U. S. 188; and while it contained two subdivisions, each subdivision was in substance a separate and distinct order, and neither the Court of Appeals, nor this Court, undertook to modify or change in the least that subdivision of the order which was enforced by those courts.

162 U. S. 188 C. N. O. & T. P. Ry. vs I. C. C:
See my argument pp. 228–237.

## XIII.

Counsel for appellant on page 18 of his reply argument quotes a portion of a sentence in my argument as follows:

"Counsel for the carriers says, 'it is admitted that the public interest at the shorter distance points is discriminated against.'"
(Printed argument for carriers, p. 83.)

What I said was:

"That the public at the shorter distance points is discriminated against is admitted; but my contention is that the discrimination is not unlawful, because it is not *unjust*.

"The public at the shorter distance points may be injured (though not in a legal sense) in not being able to compete on equal terms with Atlanta or Opelika in common territory. But the public at Cincinnati, Boston, New York, Philadelphia and Baltimore, as well as the public at Atlanta and Opelika, are greatly benefited by the competition which exists at Atlanta and Opelika."

See my argument p. 83.

XIV.

Counsel for appellant on page 19 of his reply argument says:

"We have shown in both our oral and original printed arguments, that the public interests *of all the shorter distance points discriminated against for the* 138 *miles* between Atlanta and Chattanooga, for the 171 *miles* between Atlanta and Augusta, and for the 109 *miles* between Atlanta and Opelika, are of far greater magnitude than the public interest centered at Atlanta or Opelika, or both taken together."

Counsel assumes that the public interests of all the shorter distance points for the 138 miles between Atlanta and Chattanooga, for the 171 miles between Atlanta and Augusta, and for the 109 miles between Atlanta and Chattanooga, are represented *by the local merchants*; while I contend that said interests are represented *by the local consumers.*

Counsel contends that the public interests at the shorter distance points, in the territory indicated by him, will be best subserved by a policy which I have shown will give to the local merchants a monopoly of the traffic at their respective stations; while I contend that said public interests will be best subserved by giving to the local consumers the benefit of competition between their local merchants and the merchants at Atlanta, Augusta, Chattanooga and Opelika.

See 162 U. S. pp. 218, 234, T. & P. Ry. vs. I. C. C.

XV.

Counsel for appellant on page 19 of his reply argument says:

"That the business at shorter distance points will be enlarged and their demand for goods *from the shipping points* be increased, appears from the following considerations."

I have commented on this proposition in my argument pp. 106-111.

XVI.

Counsel for appellant on page 19 of his reply argument makes the following quotation:

"The result of lower rates is generally a *greater demand* for the articles transported, and this greater demand can only be gratified by a *larger supply*."

Joint Traffic Association case, 171 U. S., 505.

I have commented on said quotation in my argument pp. 111, 112.

XVII.

Counsel for appellant on page 21 of his reply argument says:

"Counsel for the carriers has not pointed out any way in which any *legitimate* interest of the public at Atlanta or Opelika will be injuriously affected by establishing a just relation between the rates to those points and to the shorter distance points."

I have never contended, or even intimated, that any interest of the public at Atlanta or Opelika will be injuriously affected "by establishing a *just* relation between the rates to those points and to the shorter distance points;" but I do contend that the relation which now exists *is* "*just*;" and that the new relation, which counsel seeks to establish, would *not* be "*just*."

He seeks to establish a relation of rates which would unjustly deprive Atlanta and Opelika of their legitimate competitive advantages to the benefit of which they are unquestionably entitled under the law.

See my argument pp. 100, 102. pp. 113-122.

XVIII.

Counsel for appellant on page 21 of his reply argument says:

"The testimony of the merchants at the shorter distance

points (the only testimony on the subject) is that *they now purchase their supplies of goods from Cincinnati, New York, etc., and not from Atlanta or Opelika.*"

This statement of counsel is very important. It shows that the present relation of rates does *not* place the merchants at the shorter distance points at the mercy of the merchants at Atlanta, Augusta, or Opelika.

Said statement also shows that the merchants at the shorter distance points are afforded by the present relation of rates a choice between purchasing their goods at Atlanta or Opelika, in in their own territory, or, at the larger markets of NewYork and Cincinnati.

Said statement also shows that the present relation of rates so far from unjustly discriminating in favor of Atlanta and Opelika, is such that merchants at the shorter distance points instead of purchasing their goods at Atlanta or Opelika, find it to their interest to purchase at New York or Cincinnati.

## XIX.

Counsel for appellant on page 22 of his reply argument asks:

"Have Atlanta or Opelika any natural inalienable right or prerogative to supply surrounding localities with their goods, and *to have them debarred by discriminatory rates from securing their supplies direct from the sources of supply, such as New York and Cincinnati?*"

Counsel doubtless overlooked the fact that he had just admitted on page 21 of his reply argument, that the merchants at the shorter distance points "now purchase their supplies of goods from Cincinnati, New York, etc., and not from Atlanta or Opelika;" and if that admission be true it is impossible to believe that said merchants are "debarred by discriminatory rates from securing their supplies direct from the sources of supply, such as New York and Cincinnati."

## XX.

Counsel for appellant on page 24 of his reply argument says:

"The Courts below having thus exercised their discretion by '*inquiring into the facts on their own account*,' it is not incumbent upon this Court to have the cases remanded to the Commission etc.'" * * * "The conclusions of the Commission on a *part only* of the evidence (that before it) cannot be of much value after the case has been reopened by the Court and new testimony has been taken."

I agree that the conclusions of the Commission "cannot be of much value after the case has been reopened by the Court."

I insist, however, that as the Courts below "exercised their discretion by inquiring into the facts on their own account," and as both the Circuit Court, and the Court of Appeals found the facts in favor of the appellees, this Court will not reverse, unless it finds something in the record which makes it its duty to draw a different conclusion from that arrived at by both the Circuit Court, and the Court of Appeals.

In the case of C. N. O. & T. P. Ry. Co. vs. I. C. C., this Court, acting upon the theory that the Court of Appeals had accepted and approved the conclusions of the Commission upon certain questions of fact, declined to reverse the Court of Appeals.

162 U. S., p. 194, C. N. O. & T. P. Ry. vs. I. C. C.

In the case of I. C. C. vs. Alabama Midland Ry., 168 U. S., p. 144, the Circuit Court, and the Court of Appeals, reversed the Commission, just as they did in the cases at bar. This Court affirmed the decree of the Court of Appeals in the Alabama Midland Railway case; and I submit that a similar decree should be rendered in the cases at bar.

XXI.

Counsel for appellant during the oral argument insisted that there is no evidence in the record that freight from Cincinnati or New York destined to local stations on defendants' lines is delivered at such local stations by local freight trains.

In transcript No. 69, p. 154, witness Brown says: "The through schedules are made on time freight, and they operate right straight on through, and with Acworth, or Calhoun, for instance, it is transferred at Chattanooga and then put on the local freight and goes down."

On page 140 of said transcript the same witness says: "It should also be borne in mind that the cost to the railroad is very much greater to handle traffic destined to local points than it is on through traffic. For example, the time between Chattanooga and Atlanta for through schedules is about seven to eight hours, while the time consumed by local trains, doing work at the local stations, is twelve to fourteen hours. Also the necessary expense at the local stations is more in proportion than at the terminal points, for the reason that there is not sufficient work to keep the agents and their assistants busy, while at the terminal points only sufficient force is kept to do the work."

With reference to the handling of through and local freight on the New York, New Haven and Hartford R. R., the Interstate Commerce Commission says: "The defendant carriers for the carriage of through freight from New York to Boston have fast trains which make no stops at local stations for the delivery of freight between New York and Boston. These freight trains are run through on rapid time, making close connection. For the transaction of local business along their lines they have local trains which stop at the local stations and receive and deliver freight in parcels usually, though sometimes in carloads, from, and to these local stations. * * * * * * The expense of operating these fast freight lines is greatly less than that of operating their local freight trains," etc.

3 I. C. Rep. p. 275 Right Col.

Counsel has insisted in presenting these cases as though freights shipped from New York or from Cincinnati, destined to local stations on defendants' lines, were carried all the way to such stations in the same train, with freight which is carried from New York or Cincinnati to Atlanta. He insists upon leaving out of consideration that when freight destined to local stations upon a railroad reaches the line of that road it is taken out of through trains destined to the other terminus of that road, and is put into local trains to be distributed, together with other local freight, at the various local stations along the line of that road; and it is conceded by all of the witnesses that the expense of handling freight in such local trains is very much greater than the expense of handling it in through trains.

Very respectfully submitted,

ED. BAXTER,

*Solicitor for Appellees as of Record.*